



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

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S.A(MD)No.506 of 2019
and
C.M.P(MD)No.10133 of 2019

M.Ilangovan

... Appellant/Appellant/Plaintiff

Vs.

1.Tamilselvan

2.Selvam

... Respondents/Respondents/Defendants

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 26.03.2019 in A.S.No.17 of 2017 on the file of the Subordinate Judge, Kulithalai, confirming the judgment and decree dated 16.12.2016 in O.S.No.38 of 2012 on the file of the District Munsif Court, Kulithalai.

For Appellant : Mr.R.Murugappan

For R1 : Mr.G.Sridharan

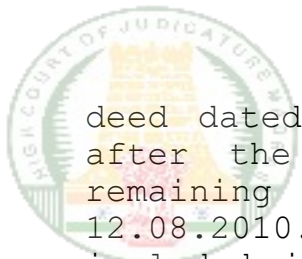
For R2 : Mr.S.Arul

J U D G M E N T

The plaintiff in O.S.No.38 of 2012, having suffered dismissal of his suit for permanent injunction restraining the defendants from interfering with his possession at the hands of the courts below, has come up with this Second Appeal.

2. The suit was filed by the plaintiff contending that the suit property, which is classified as Village Natham, was originally in occupation of two brothers namely, Duraisamy Naicker and Govindan. According to the plaintiff, while Duraisamy Naicker had sold half his share to one Reena D/o Natarajan under sale deed dated 21.06.2010, the other half, which was in possession of Govindan, devolved to his wife Lakshmi on his death in the year 1993. Claiming that patta was also issued to Lakshmi in patta No.440 and the said Lakshmi was in continuous possession of the property till she sold the same to the plaintiff on 28.02.2012, the plaintiff has come forward with the aforesaid suit.

3. The suit was resisted by the defendants contending that one Govindan had sold the property that belonged to him under a sale



deed dated 07.07.1989 in favour of his own brother Duraisamy and after the death of Duraisamy, the son of Duraisamy sold the remaining extent of 1142 sq. ft to the first defendant on 12.08.2010. It was also claimed that though Lakshmi's name was included in the patta wrongly, upon application by Duraisamy her name was deleted from patta No.440 relating to the suit property by the Tahsildar, Kulithalai on 15.12.1997. Therefore, according to the first defendant, right from the date of purchase, he has been in possession and enjoyment of the property and the vendor of the plaintiff namely, Lakshmi w/o Govindan, has no right over the property. The second defendant has filed a separate written statement substantially adopting the written statement of the first defendant. The first defendant also made a counter claim seeking permanent injunction in his favour.

4. At trial, the plaintiff was examined as P.W.1 and Ex.A1 to Ex.A5 were marked. The defendants were examined as D.W.1 and D.W.2 and Ex.B1 to Ex.B8 were marked.

5. Upon consideration of evidence on record, the trial court came to the conclusion that once Govindan had parted with the property under sale deed dated 07.07.1989 and the wrong inclusion of Lakshmi's name in the patta No.440 was rectified by the proceedings of the Tahsildar dated 15.12.1997, the plaintiff could not derive title under sale deed dated 28.02.2012 said to have been executed by Lakshmi, who had no title over the property. The revenue records namely the house tax receipts, which were marked as Ex.A.3 and Ex.A.4, were rejected by the trial court on the ground that while admittedly there was no building in the suit property, those documents, which are house tax receipts, cannot be relied upon. On the said findings, the trial court dismissed the suit as well as the counter claim.

6. Aggrieved, the plaintiff preferred an appeal in A.S.No.17 of 2017 while the first defendant preferred an appeal in A.S.No.5 of 2017 as against the dismissal of his counter claim.

7. The lower Appellate Court upon re-consideration of evidence on record affirmed the findings of the trial court and rejected the claim of the plaintiff. On such affirmation, the lower Appellate Court dismissed A.S.No.17 of 2017 filed by the plaintiff. As far as the counter claim is concerned, the lower Appellate Court found that the trial court had erroneously dismissed the counter claim. The lower Appellate Court has found that once it is admitted that the predecessor in interest of the plaintiff namely the husband of his vendor, Govindan had sold the property under sale deed dated 7.7.1989 and revenue records were also mutated to the name of Duraisamy, the purchaser under sale deed dated 07.07.1989, the trial court was not right in dismissing the counter claim made by the first defendant. On the said findings, the lower Appellate Court



claim and decreed the counter claim. Aggrieved, the plaintiff has come up with this Second Appeal.

8. I have heard Mr. R. Murugappan, learned counsel appearing for the appellant.

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9. The learned counsel appearing for the appellant would vehemently contend that the sale deed dated 07.07.1989 is not admitted and hence the lower Appellate Court was not right in basing its conclusion on the sale deed dated 07.07.1989.

10. I am unable to accept the said contention of the learned counsel for the appellant for the following reasons:

There is no plea in the plaint regarding invalidity or otherwise of the sale deed dated 07.07.1989. The first defendant had filed a counter claim based on the said sale deed. It is not seen from the records that any reply statement was filed to the counter claim disputing the validity of the sale deed. The plaintiff would contend that he had purchased the property based on the entry in the patta, wherein the wife of Govindan was shown as joint pattadhar under Patta No.440. The said contention was not accepted for the reason that though the name of Lakshmi w/o Govindan was initially included as joint pattadhar in patta No.440, by the proceedings of the Tahsildar, Kulithalai dated 15.12.1999, Lakshmi's name was deleted from the patta and the said order was left unchallenged. As such, there is no valid evidence or proof of title of Lakshmi w/o Govindan after execution of sale deed dated 07.07.1989. Ofcourse, the land in question being classified as Grama Natham, a person in possession is entitled to the same. Admittedly, the husband of the vendor of the plaintiff had parted with the property even in the year 1989. Therefore, his wife Lakshmi has no right over the property, which she could validly convey to the plaintiff.

11. The courts below have analyzed the evidence on record in the proper perspective and reached a factual conclusion on the validity of the sale deed dated 07.07.1989 as well as the title of the vendor of the plaintiff. These findings being factual findings based on evidence on record cannot be termed as perverse. I do not find any question of law much less a substantial question of law in order to enable me to entertain this appeal. Hence, this Second Appeal fails and the same is dismissed without being admitted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)



To,

1. The Subordinate Judge, Kulithalai
2. The District Munsif, Kulithalai.

+1 CC to M/s.G.SRIDHARAN, Advocate (SR-371[F] dated 06/01/2020)

+1 CC to M/s.R.MURUGAPPAN, Advocate (SR-451[F] dated 07/01/2020)

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06.01.2020

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